

MEMORANDUM

STATE OF ALASKA Office of the Governor Division of Governmental Coordination

TO: Coastal Policy Council

DATE: May 28, 2002

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SUBJECT: Proposed Regulation Revisions to Alaska Administrative Code (AAC), Title 6, Chapter 50, Process for Consistency Determination, Review, and Petition for Coastal Management

The Division of Governmental Coordination, in cooperation with the Alaska Coastal Management (ACMP) Working Group members, representatives from coastal resource districts, the Department of Law, state resource agency staff, DGC staff, and interested members of the public, has drafted proposed regulatory revisions to the consistency review process at 6 AAC 50. The purpose of the regulation revisions are to implement, interpret, and make specific Alaska Statute (AS) 44.19 and AS 46.40 with regard to the consistency review process, and includes the amendment, repeal, and re-adoption of certain sections, and the addition of new sections to 6 AAC 50. DGC presents the proposed regulation revisions to the Council for review and approval.

HISTORY AND PURPOSE

The consistency regulations at 6 AAC 50 were originally codified in 1984. The regulations at that time (and currently) laid out a process for the "networked" consistency review and coastal management program. With minor exceptions, the regulations have remained substantially unchanged since 1984. Over the course of the past 18 years, the ACMP participants have gained considerable experience with the consistency review process.

Although the consistency review regulations, as codified in 1984, presented a solid platform for the coordinated consistency review, many issues have been identified over the years as needing additional regulatory guidance. This needed guidance, along with the maturity of the program and the experience of the participants, has illustrated the needed for DGC to update the regulations.

In considering an effort of this magnitude, DGC laid out the goals and purpose of the regulatory revision, as follows:

- Provide up-to-date regulations that are clear and efficient
- Establish and clarify the process to evaluate a proposed project against the enforceable policies of the ACMP
- Create a predictable consistency review process for proposed development projects

PROCESS AND PUBLIC REVIEW

In February 1999, DGC submitted a grant request to the Office of Ocean and Coastal Resource Management (OCRM) for monies sufficient to conduct a 2-year regulatory revision effort. With OCRM approval of this grant request, DGC announced its intent to develop the proposed regulations in July 1999, and initiated the regulations development process. DGC held internal staff meetings to review the current regulations, understand the issues that needed clarification, and solicit ideas on how to improve upon the consistency review process. From those internal DGC meetings, enough ideas and discussion were generated to begin the drafting process on the regulatory revisions.

In December 1999, the first draft of the regulatory revision was developed and provided to the ACMP Working Group members, DGC staff, and interested members of the public. Bi-weekly meetings, publicly noticed and open to the interested public, were held to discuss the current regulations and the draft of the regulatory revisions. These meetings continued through May 2000, when the entirety of the current regulations and the draft of the revisions had been worked through. DGC worked internally to review and redraft the regulatory revisions based on the substance of the meetings and the participant comments and concerns.

In September 2000, DGC released a redraft of the proposed regulatory revisions - this one quite different from the first. This draft included requirements from the federal consistency review process at 15 C.F.R. 930, and captured and addressed the issues that were highlighted and that remained outstanding from the previous draft. Additional meetings, publicly noticed and open to the interested public, were held with the ACMP Working Group members and the interested public to discuss the draft and make necessary changes.

On November 15, 2000, DGC presented the draft regulatory revisions to the full Council at a meeting held in Anchorage, and requested that the Council approve the draft regulatory revisions and allow DGC to proceed with a public notice and formal rulemaking under the Administrative Procedures Act at AS 44.62. The draft package was approved by the Council for formal public review and comment.

DGC released a formal draft of the regulatory revisions for public review and comment on December 10, 2000, and allowed an extended comment period. Based on the complexity of the regulations, the December/January timeframe for the review, and requests from the public, DGC extended the comment period by 30 days, extending the comment period until February 28, 2001. During that comment period, DGC held three formal oral hearings to solicit comments

from the interested public and ACMP participants. Substantial comments were received on the draft regulatory revisions, both at the hearings and as submitted in writing.

Following the closure of the formal review and comment period, DGC reviewed and considered the comments that were submitted, and began making appropriate amendments to the draft regulations. DGC re-crafted the regulatory revisions, provided a comprehensive response to all the comments that were received, and held two publicly noticed meetings to discuss with and explain to the commentators, ACMP participants, and other interested members of the public, the substance of the amendments to the draft. These meetings were held in August and September 2001.

DGC released a second formal draft of the regulatory revisions for public review and comment on October 1, 2001, and allowed a 75-day comment period. Again, substantial comments were received on the redrafted regulatory revisions.

Following closure of the second formal review and comment period, DGC reviewed and considered the comments that were submitted, has made appropriate amendments to the draft regulations, and has worked with many of the commentators to better understand their concerns, and to explain the confines and statutory limitations under which these regulatory revisions have been crafted.

SUMMARY OF PROPOSED REGULATION REVISIONS

The proposed regulations package is substantially different in form and content from the current regulations codified at 6 AAC 50. The proposed regulations include new articles that better detail the consistency review process that a proposed project is subject to, sets out the public notice and comment requirements, better defines the elevation and petition processes, clarifies the management and implementation of the ABC List, sets out new language for a project proposing a modification, and defines the consistency review process for a project that requires a renewal of a state agency authorization. These proposed regulations have been written to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1465), as amended, the Coastal Zone Management Program Regulations (15 C.F.R. 923), the Federal Consistency With Approved Coastal Management Programs regulations (15 C.F.R. 930), and the appropriate State statutes and regulations.

The proposed regulatory revisions, as included in your package (Enclosure III, June 2002 draft), represent for entirety of the regulation amendments. Included in the packet are the current regulations and the proposed regulations, with special font to highlight the changes that are proposed. In the draft,

- new proposed regulation sections are preceded with the phrase "6 AAC 50 is amended by adding a new section to read:" and are presented in normal font
- Sections and text that have minor proposed changes (from current to proposed) are preceded with the phrase "6 AAC 50.XX is amended to read:" and the changes are presented with new proposed text underlined, and deleted text [BRACKETED AND IN CAPITALS].

- Current sections that are proposed for repeal are preceded with the phrase "6 AAC 50.XX is repealed:" with the repealed text font *minimized and italicized*.

The package of draft regulatory revisions before you now is reflective of the most recent comments that were submitted in December 2001, and has benefited from nearly three years worth of meetings, discussions, and reviews on the issues surrounding and related to the consistency review process and this regulatory revision effort. This package meets with the goals that DGC originally established when originally planning this revision effort.

FURTHER APPROVAL PROCESSES

Following Council review and approval of the regulatory revisions, the package will be submitted to the Department of Law for legal, editorial, and technical review. Following the Department of Law review, the package will be sent to OCRM for a 28-day public review as a "routine program change" to the ACMP (15 C.F.R. 930). Upon OCRM approval, the package will be forwarded to the Lieutenant Governor's Office for filing, and will become effective 30 days later.

RECOMMENDATION

The DGC recommends the Coastal Policy Council adopt the regulatory revisions to the consistency review regulations at 6 AAC 50.

6 AAC 50 Consistency Review Process
Coastal Policy Council – Packet

Table of Contents

- I. CPC Memo – dated May 28, 2002
- II. Certification Order
- III. Regulation Revisions for Council Approval – June 2002 draft**
- IV. Public Comments on October 2001 draft
Timely comments received from: DEC; DNR; DFG; AOGA; Cook Inlet Keeper et al; Kenai Peninsula Borough; Sealaska, Aleutians West CRSA; City and Borough of Juneau; Bristol Bay CRSA; Municipality of Anchorage; Robertson, Monagle & Eastaugh; DCED; Lake and Peninsula Borough; Chugach Electric Association; Alaska Center for the Environment; Stevens Exploration Management; Sitnasuak Native Corporation; Phillips Alaska; The Alliance; Unocal; Mary A. Nordale; BP Exploration Alaska; NANA Development; Chugach Alaska; Resource Development Council; Bristol Bay Native Corporation; Alaska Forest Association; Thales Geosolutions; Alaska Miners Association; City and Borough of Sitka; Forest and Land Management; and SeaRiver Maritime
- V. Draft Regulation Revisions – dated October 1, 2001
- VI. DGC Response to Comments – dated October 1, 2001
- VII. Public Comments on December 3, 2000 draft
Timely comments received from: BP Exploration Alaska; Kenai Peninsula Borough; Southeast Alaska Conservation Council; Robertson, Monagle & Eastaugh; AOGA; DFG; DNR; DEC; Cook Inlet Keeper et al; Aleutians West CRSA; Sealaska; DCED; USDA Forest Service; Phillips Alaska; and USDI Minerals Management Service
- VIII. Draft Regulation Revisions – dated December 3, 2000